

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1967 OF 2013

- . New India Assurance Company Ltd.
Through its Divisional Manager,
Adalat Road, Aurangabad. ..Appellant

VERSUS

1. Chandrakala Madhukar Mengawde
Age: 37 years, Occu.: Household.
2. Pravin Madhukar Mengawade
Age: 20 years, Occu.: Education.
3. Priyanka Madhukar Mengawade
Age: 17 years, Occu.: Education.
Minor – U/G of No.1 Mother Chandrakala
4. Gangubai Maruti Mengawde
Age: 65 years, Occu.: Nil

All R/o.Mengalwadi Rajapur,
Tal.Shrigonda, District Ahmednagar.
5. Vilas Baban Waghmare
Age: 55 years, Occu.: Business,
R/o.Deodaithan, Tal.Shrigonda,
Dist.Ahmednagar.
6. Balasaheb Devdas Gaikwad
Age: 38 years, Occu.: Driver,
R/o.Belwandi Bk., Tal.Shrigonda,
Dist.Ahmednagar. ..Respondents

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Advocate for Appellant : Mr.S.G.Chapalgaonkar
Advocate for Respondent Nos.1 to 4 : Mr.S.L.Bhapkar

...

WITH

CA/9392/2013 AND CA/4002/2017

...

CORAM : M.S.SONAK, J.

DATE : 15th JANUARY, 2018

ORAL JUDGMENT:-

1) Heard Mr.S.G.Chapalgaonkar learned counsel for the appellant and Mr.S.L.Bhalekar learned counsel for the respondents/claimants. By order dated 7.8.2013, this Court had made it clear that the appeal itself will be heard finally at the stage of admission. Accordingly, record and proceedings were called for and at the request of and with the consent of learned counsel for the parties, the appeal is admitted and taken up for final disposal.

2) Mr.Chapalgaonkar learned counsel for the appellant has raised following two grounds in support of the

appeal:-

a) That the driver of the offending vehicle responsible for the accident was licenced only to drive a non-transport vehicle. Since, the offending vehicle has been admittedly to be founded to be a transport vehicle, which the driver was never authorized to drive, there is a fundamental breach of the condition of the Insurance Policy. Mr.Chapalgaonkar submits that in these circumstances, the Motor Accident Claims Tribunal (MACT) erred in foisting liability on the appellant Insurance company.

b) That from the pleadings as well evidence on record that deceased Madhukar was nothing but the gratuitous passenger travelling in a goods Vehicle. In terms of Section 147 of the Motor Vehicles Act, 1988 (said Act), there is absolutely no obligation upon the Insurance Company, to assume liability

towards any injury or demise to such a gratuitous passenger. Even factually the Insurance Company did not cover any liability towards any such gratuitous passenger. Mr.Chapalgaonkar submits that this is a additional reason as to why the Insurance Company, who never have been held liable in the like cases. In support of this proposition, Mr.Chapalgaonkar relies upon *New India Assurance Co.Ltd. Vs. Asha Rani and others [(2003) 2 SCC, 223]*, *NICU Vs. Rat and ors. [(2009) 2 SCC, 75]*, *National Insurance Co.Ltd. Vs. Cholleti Bharatamma and others [(2008) 1 SCC, 423]*, *Oriental Insurance Co.Ltd. Vs. Devireddy Konda Reddy and others [2003 2 SCC, 339]* and *United India Insurance Company Vs. Suresh K.K. and another [(2008) 12 SCC 657]*.

3) Mr.S.L.Bhapkar learned counsel for the respondents/claimants submits that the first ground raised by Mr.Chapalgaonkar no longer holds good in the

light the decision of the Hon'ble Supreme Court in the case of *Mukund Dewangan Vs. Oriental Insurance Company Limited [(2017) SCC Online SC, 788]*. He submits that even otherwise, such ground stands negated by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs. Annappa Irappa Nesaria & Ors. [AIR 2008 SC 1418]*.

4) Mr.Bhapkar submits that in this case, the pleadings as well as the evidence on record clearly indicates that the deceased Madhukar was travelling in the Goods Vehicle alongwith his goods i.e. Milk Cans and therefore, any liability towards the deceased was completely covered in terms of the provisions of Section 147 of the Motor Vehicles Act as amended in the year 1994. Mr.Bhapkar submits that infact the factual position stands admitted by the Insurance Company in its written statement and therefore, the second ground urged in support of his appeal neither arising nor is required to be decided in

favour of the appellant Insurance Company. Mr.Bhapkar points out that most of the decisions relied upon by the appellants pertain to the position of Section 147 of the said Act prior to its amendment in the year 1994. For these reasons, Mr.Bhapkar submits that this appeal may be dismissed.

5) So far as the first ground raised by Mr.Chapalgaonkar is concerned, the same, stands answered against the appellant in **Mukund Dewangan** (supra) and **Annappa Irappa Nesaria** (supra). In both these cases, it has been held that the Insurance Company cannot deny any liability on the ground that driver, who was having licence to drive Light Motor Vehicle was found to be driving a transport vehicle without any additional endorsement on the licence to drive such a vehicle. In this case, there is absolutely no dispute that the driver of the offending vehicle had a licence to drive Light Motor Vehicle. Therefore, the sole ground that there was

no additional endorsement made upon such licence to entitle such driver to drive a transport vehicle, cannot be a good ground for the Insurance Company to shirk its liability to pay compensation. The first ground raised by Mr.Chapalgaonkar on behalf of the appellants, therefore, cannot be accepted.

6) So far as the second ground is concerned, it is necessary to make reference to the pleadings. In the Claim Petition, it is clearly stated that deceased Madhukar, was travelling in a Goods Vehicle alongwith his Milk Cans after delivery of milk. No doubt, there is also a statement that Madhukar chose to travel in this Goods Vehicle because driver of the Goods Vehicle was known to him. The pleadings in such matters cannot be construed pedantically. The essence of the pleadings is the averment that the deceased Madhukar was travelling in the Goods Vehicle alongwith his goods namely Milk Cans.

7) The Insurance Company has not in its written statement construed the pleadings pedantically. The Insurance Company may have denied the averments made in the Claim Petition, however, the Insurance Company in its written statement has gone on record to explain how it has understood or construed the pleadings in the Claim Petition. Relevant averments in this regard are contained in paragraph No.14(a) of the Claim Petition. In paragraph No.9 of the written statement, there is an evasive denial. However, in paragraph No.11 of the written statement of the Insurance Company, this is what has been stated:-

"11] It is submitted that as per the petition and as per the Police papers deceased was travelling in the goods vehicle for Hire or reward and not in pursuance of contract. The policy issued does not cover the risk of the deceased who was occupant in the vehicle and was sitting in the rear portion of the vehicle. It is not a case of applicants that deceased was travelling along with the goods, therefore, it is

submitted that deceased was unauthorised passenger, even in the FIR it is stated that deceased was "Pravasi" as such this is a fundamental breach of terms and conditions of the policy committed by the owner of the goods vehicle, knowing well that passengers are not allowed in the goods vehicle, therefore, this opponant is not liable to pay any amount even under the No Fault liability, therefore, petition be dismissed against this opponant."

8) In the aforesaid circumstances, it does appear that even the Insurance Company agrees that it was the case of the claimants that the deceased Madhukar was travelling in a Goods Vehicle for hire or reward. Further, there is a statement to the effect that it was not the case of the claimants that the deceased was travelling along with the goods. This implies that if there are pleadings to the effect that the deceased was travelling along with the goods and further, if there is evidence to back the same, the Insurance Company will have no reason to avoid liability.

9) If the Claim Petition is perused, there is very clear assertion on the part of the claimants that the deceased was travelling alongwith the goods. The evidence on record, both oral as well as documentary, establishes this fact. Even Police papers endorse this position. There is really ample material on record which establishes that the deceased was travelling along with his Milk Cans after having delivered the Milk.

10) Taking into consideration the pleadings as well as evidence on record, there is no reason to fault the view taken by the Motor Accident Claims Tribunal to the effect that Insurance Policy covers liability towards demise of a person like Madhukar. This is because Madhukar was travelling along with the goods at the time when he met with fatal accident.

11) Section 147 of the Motor Vehicles Act, inter-alia,

provides that in order to comply with the requirements of Chapter XI of the said Act, a Policy of Insurance must be a Policy issued by a person, who is authorized insurer; and insure a person or classes of a person specified in the Policy to the extent specified in Sub-Section (2). Such insurance has to be covered against any liability, which may be incurred by such person in respect of death or bodily injury to any person **including owner of the goods** or his authorized representative carried in the vehicle, or damage to any property of third party caused by or arising out of the use of the vehicle in a public place.

12) Taking into consideration the pleadings as well as evidence on record, the liability in the present case has arisen on account of death of the owner of the goods carried in the vehicle. Accordingly, the plea based upon the construction of Section 147 of the said Act cannot be accepted.

13) In the case of **Asha Rani** (supra) at Paragraph No.12 of the said Judgment, it is noted that there was no dispute in the batch of appeals when the cause of action in each of the cases arose prior to coming into force the 1994 Amendment in the Motor Vehicles Act, 1988, and therefore, the 1994 Amendment would have no bearing on the matter.

14) In the present case, there is absolutely no dispute that the cause of action has arisen after the 1994 Amendment, in which the crucial expression "*.....including the owner of the goods or his authorized representative carried in the vehicle.....*" came to be introduced in Section 147(1)(b)(i) of the said Act.

15) In **Asha Rani** (supra), the Hon'ble Supreme Court has held that the 1994 Amendment was not clarificatory in nature and therefore, there was no question of giving it

any retrospective effect so as to cover cases where cause of action arose prior to 1994 Amendment.

16) Therefore, the principle in **Asha Rani** (supra) is not applicable to the facts of the present case in which the cause of action has admittedly arisen after the 1994 Amendment.

17) Most of the other decisions relied upon by Mr.Chapalgaonkar, learned counsel, follow the **Asha Rani** (supra) principle and therefore, are distinguished on the same ground as aforesaid. In addition, in **Rattani** (supra), infact, it was admitted that there were no gift articles in the vehicle concerned, and therefore, the passengers were simply gratuitous passengers not travelling in their capacity as owners of any goods.

18) In **Cholleti Bharatamma** (supra), the Insurance Company was held liable in respect of only one of the

passenger, who was actually found to be travelling as owner of the goods, but liability in respect of other passengers, who were not so found, was not foisted upon the Insurance Company, This document infact assists the respondents than the appellant Insurance Company.

19) **Devireddy Konda Reddy** (supra), is relied upon the **Asha Rani** (supra) principle and is therefore, required to be distinguished on the same basis as **Asha Rani** (supra) has been distinguished.

20) In **Suresh K.K.**(supra), deceased was a gratuitous passenger and no goods were found to be carried in the offending vehicle. On this factual ground, the decision is clearly distinguishable.

21) Thus, both on facts as well as in law, it is not possible to accept the two contentions raised by Mr.Chapalgaonkar on behalf of the appellant.

22) Since, no other grounds were raised in support of appeal and two grounds raised in support of the appeal deserve no acceptance, this appeal is liable to be dismissed and hence, hereby dismissed.

23) As the appeal is dismissed, interim order is vacated.

24) In the facts and circumstances, there shall be no order as to costs.

25) The respondent claimant Nos.1 to 4 are permitted to withdraw the compensation amount deposited in this Court after accounting for the amount already withdrawn by them during pendency of this appeal. They are permitted to withdraw interest, if any, that may have accrued on the said amount.

26) From out of the withdrawn amount, Rs.60,000/- to be paid to respondent No.4, Mrs.Gangubai Maruti Mengawde. The balance amount to be paid to respondent Nos.1, 2 and 3 in equal proportion.

27) Civil Application for stay does not survive as the appeal is disposed of.

[M.S.SONAK, J.]